**Fair Use: Remix Culture, Mashups, and Copyright**

In this lesson, students will focus on defining the concept, purpose, and impact of fair use in U.S. copyright law. Students will refine their understanding of fair use through the lens of the increasingly popular remix culture of music, visual art, and video.

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**Notes for the Educator**

Recent advances in technology have led to the increased malleability of media like text, music, and video. Concurrent advances in the speed and flexibility of communication have resulted in the growth of "citizen media," where amateurs and regular citizens are making use of copyrighted content in the process of civic engagement. Meanwhile, others are using copyrighted content to build a culture of remixes and mashups — essentially multimedia collages — exercising a great deal of wit and creativity in the process.

As an exception to copyright, fair use has been a key to the freedoms individuals have in interacting online. Fair use permits individuals to do things that could otherwise be deemed illegal under copyright law — like using clips from a television show in a video produced to comment on a controversy related to the television show. The copyright statute codifies the following four factors in weighing whether or not the use of a copyrighted work is a fair use:

* the purpose and character of the use
* the nature of the copyrighted work
* the amount and substantiality of the portion used
* the effect of the use on the market for the original

These four factors have been the basis for numerous court decisions about what is acceptable in art, commerce, and other areas where copyright law has an impact. You can find more explanation about these four factors in the [Fair Use FAQ](http://www.teachingcopyright.org/handout/fair-use-faq). Understanding the basics of fair use is critical to students' ability to make good decisions about what kinds of creation and sharing are legally protected — or not.

But learning about fair use is also an opportunity for students to encounter important civic concepts. For example, Congress codified several fair use principles in 1976, but those principles were based on, and have been further developed by, a series of important court decisions. This relationship between the statutes and the courts may provide a useful starting point for students to understand more about how law is made and developed.

Finally, because the question of whether a given work is protected by fair use usually depends on assessing the facts of the creation in light of the fair use "factors," a fair use inquiry is a great way for students to practice assessing facts, applying logic, and arguing for a particular conclusion — skills that they will exercise in the fair use mock trial in Lesson 5.

**Objectives for Students**

* Review the actors/stakeholders in the copyright debate.
* Examine the "four factors" and develop skills and tools to assess the difference between the fair use of copyrighted material and copyright infringement.
* Discuss the interrelation of fair use, free speech, and censorship, online and offline.
* Review digital video remixes and debate their legal merits using the concept of fair use.

**Activity Highlights**

The article "Illegal Art" introduces students to the ambiguity facing artists that use the work of others in the process of creating a new work, often in an attempt to comment on the original.

The two online videos presented to the class are examples of "remix" videos that make changes to existing media for the purpose of creating a new creative work. You will lead the class in evaluating the videos with respect to the four fair use factors. The [Fair Use FAQ](http://www.teachingcopyright.org/handout/fair-use-faq) gives a comprehensive overview of the fair use factors, but here are some additional notes to consider in applying the factors to the videos in the lesson:

**MoveOn's** [**"Stop the Falsiness"**](http://www.youtube.com/watch?v=sNHqX27hlz8)**:**  
This parody video, created by the political advocacy group MoveOn and film company Brave New Films, uses footage from Comedy Central's "The Colbert Report" to make fun of the show and even MoveOn itself.  
Purpose: The purpose of the original Colbert Report footage was to engage in one type of parody (varying according to the clip: environmental issues, for example). The purpose of MoveOn's remix video is to parody the Colbert Report and, to a lesser extent, parody MoveOn and raise awareness about its work. The clips are interspersed with commentary, creating a very different work from the original. Therefore, the second work is transformative, i.e., it changed the original into a whole new work, toward a different purpose. In addition, there is no evidence of commercial intent in the MoveOn remix video.  
Nature of the Original Work: The original Colbert Report clips are creative. However, courts have held that this factor is less important when the second work is transformative.  
Amount and Substantiality of the Copying: The MoveOn video uses a number of short clips. However, it takes no more than necessary to accomplish the transformative purpose.  
Market Harm: The MoveOn video does not substitute for the original in any market — no one would watch this instead of the Colbert Report. Another argument in favor of its being decided to be fair use is that it is unlikely that the Colbert Report would have licensed use of the clips to parody the show itself. (Courts have held that market harm is particularly unlikely when a parody is involved, precisely because the creators of an original are unlikely to license for parodic purposes.)

[**"A Fair(y) Use Tale"**](http://www.teachingcopyright.org/handouts/a-fair%28y%29-use-tale)**:**  
Purpose: The purposes of the original Disney footage vary by clip, but most were intended purely for entertainment. The purpose of the remix, "A Fair(y) Use Tale," is to educate viewers about fair use principles. Individual Disney works are combined in a new and creative (transformative) way to accomplish that purpose. The remix is noncommercial.  
Nature of Original Work: The original Disney works are creative. However, courts have held that this factor is less important when the second work is transformative.  
Amount and Substantiality of the Copying: The remix video takes a number of short clips from various sources. However, it takes no more than necessary to accomplish the transformative purpose.  
Market Harm: The remix video does not substitute for the original Disney works in any conceivable market.

Remember to leave some class time to discuss the final project and to explain the [Trial Guide](http://www.teachingcopyright.org/handout/trial-guide) that students are responsible for reading as homework.

**Resources**

**For the Educator**

* [Fair Use FAQ](http://www.teachingcopyright.org/handout/fair-use-faq)
* [Trial Guide for the Educator](http://www.teachingcopyright.org/handout/trial-guide-educator)
* [Glossary of Terms](http://www.teachingcopyright.org/handout/glossary)
* a computer, Internet access, and a projector OR a computer lab with Internet access (for accessing the online video clips relevant to this lesson)

**For the Student (in-class)**

* [Stakeholders Worksheet](http://www.teachingcopyright.org/handout/stakeholders-worksheet)
* [Fair Use FAQ](http://www.teachingcopyright.org/handout/fair-use-faq)
* [Trial Guide](http://www.teachingcopyright.org/handout/trial-guide)

**For the Student (homework)**

* [Stakeholders Worksheet](http://www.teachingcopyright.org/handout/stakeholders-worksheet)
* [Trial Guide](http://www.teachingcopyright.org/handout/trial-guide)

**Additional Reading**

* Derek Slater, ["Illegal Art,"](http://creativecommons.org/weblog/entry/7030) Creative Commons, 1 October, 2005.

**Lesson Activities**

1. Students will present their copyright stakeholder research to the class. Allow some time for questions.
2. (10 minutes) Read Derek Slater's article, "Illegal Art," with the class, and pose the following questions:
   * Do they agree or disagree with Slater's point of view?
   * Should music sampling, "remixed" video, and mashups be considered illegal?
   * Does current copyright law censor artistic expression and free speech?
3. (10 minutes) Using the [Fair Use FAQ](http://www.teachingcopyright.org/handout/fair-use-faq), outline the fair use factors for the class.
4. (30 minutes) Show your class the two online videos listed below. (If you have additional time, have your class view "Remix Culture," a great video compilation of fair use and the digital remix genre put together by the Center for Social Media at American University's School of Communication.) Poll the class and ask students to raise their hands if they think the videos qualify as fair use or infringe copyright. Now have the class evaluate each video's fair use status using the "four factors."
   * ["Stop the Falsiness"](http://www.youtube.com/watch?v=sNHqX27hlz8) (2:30 minutes)  
     By MoveOn and Brave New Films. See EFF's [MoveOn, Brave New Films v. Viacom case.](http://www.eff.org/cases/moveon-brave-new-films-v-viacom)
   * ["A Fair(y) Use Tale"](http://www.teachingcopyright.org/handouts/a-fair%28y%29-use-tale) (10:13 minutes)  
     By Professor Eric Faden, Bucknell University. See Stanford Law School's [Fair Use Project.](http://cyberlaw.stanford.edu/documentary-film-program/film/a-fair-y-use-tale)
   * Optional: ["Remix Culture"](http://www.centerforsocialmedia.org/videos/remix_culture/) (3:51 minutes)
5. (10 minutes) Pass out the [Trial Guide](http://www.teachingcopyright.org/handout/trial-guide) to the students and use the [Trial Guide for the Educator](http://www.teachingcopyright.org/handout/trial-guide-educator) to explain the final class project. First, divide the students into two groups: plaintiff and defendant. For each group, ask for four volunteers to play the role of attorneys and one volunteer to play the role of plaintiff or defendant. (A total of 10 students should have speaking roles for the trial.) The remaining students will be jurors during the trial but will contribute to the plaintiff and defendant's arguments during preparation. Each group has to work closely as a team, as they must strategize a cohesive argument to present to the court.

Using the [Trial Guide](http://www.teachingcopyright.org/handout/trial-guide), students will begin to research, prepare, and write arguments for the mock trial of *Walt Disney Studios v. Faden*. Let them know that they should have fun and "dress the part" — encourage them to fully assume their legal roles.

**Homework**

Have students read the [Trial Guide](http://www.teachingcopyright.org/handout/trial-guide) and begin research for the mock fair use trial of *Walt Disney Studios v. Faden* ("A Fair(y) Use Tale").

**Assessment**

Students will hand in their Stakeholders Worksheets at the end of class.

**Extension Ideas**

Using the [Fair Use FAQ](http://www.teachingcopyright.org/handout/fair-use-faq) handout as a guide, ask your students to create an original art collage that parodies or comments on a pop culture figure, celebrity or band. Their projects can be done either as a physical poster or digitally on a computer. Their collages must include at least three original images (e.g., original drawings or photos), three copyrighted (fair use justified) images and three public domain images. See the [Public Domain FAQ](http://www.teachingcopyright.org/handout/public-domain-faq) for resources. Remind the students that the collage itself is not protected under fair use unless it meets the four factors outlined in the FAQ. Students can share their works with the class at the beginning of the next session.